IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.177 Of 2000.

Date of decision: June 22nd, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Purshotam Singh and Another. ……. Respondents.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondents: Mr.Bimal Gupta, Advocate.

Surinder Singh, J(oral):

The judgment of acquittal passed in Criminal Case No 129-2/95, dated 3.5.1999, under Section 324 read with Section 34 of the Indian Penal Code, by the Judicial Magistrate, Ist Class, Nurpur, has been assailed in this appeal by the State-appellant, precisely on the ground that the trial court did not appreciate the evidence of the prosecution in the right perspective. Had it been properly seen, the result would have been different.

Leave to appeal was granted by this Court on 27.4.2000. Now the matter has been finally heard.

I have heard Shri V.K. Verma, learned Additional Advocate General for the State and Shri Bimal Gupta,

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

Advocate, for the respondents and have reappraised the evidence on record.

In brief, the prosecution set out for trial a case that on 10th April, 1995, the complainant Gagan Singh complained to the police that the respondents in the morning at about 8.00 AM, called him from his house. Then respondent Sansar Singh who was armed with a sickle gave a blow on his left hand voluntarily and another respondent Purshotam Singh also caused an injury on his elbow with a spade. His brother Waryam Singh intervened and saved him. In the meantime, his father also reached the spot. On the basis of the aforesaid complaint, a formal F.I.R. was registered under Sections 324, 323 read with Section 34 of the Indian Penal Code against the respondents. Police swung into motion. Gagan Singh and Waryam Singh who was also allegedly injured were medically examined. They were found having sustained simple injuries, caused with blunt weapon, whereas, there was sharp edged injury on the person of Sansar Singh. The police took into possession one sickle, two danda's and a spade. After, recording statements of the witnesses under Section 161 of the Code of Criminal Procedure, the challan was presented in the court for trial. The respondents denied the charges and claimed trial.

To prove its case, the Prosecution examined PW1 Onkar Singh, PW2 Dr. Sanjay Mahajan, PW3, Janak Singh, PW4 Waryam Singh, PW5 Gagan Singh, complainant, PW6 Padu Ram, PW7 Satwant Singh, Additional Station House Officer and PW8 ASI Sharif Mohammed, Investigating Officer.

The cause of alleged incident has not been spelt out by any of the witnesses nor explained in the report submitted under Section 173 of Code of Criminal Procedure. The father of the complainant Janak Singh (PW3) had tried to lend assurance to the case of the complainant by marking his presence at the time of alleged incident, but in the cross-examination, he has stated that there was none including himself in the house when the respondents came to his house to call Gagan Singh. He was also confronted with his statement Mark X, wherein, it was also not recorded that the injuries were inflicted to the complainant in his presence. According to Waryam Singh (PW4), he intervened when he saw his brother Gagan Singh (PW5) was being dragged towards the house of accused and was given a darati blow. In cross-examination, he has stated that he did not know the cause of the incident. Even PW5 Gagan Singh has stated that darati shown to him was not the same and the spade was also having the same without iron portion of it, which were not those when exhibited. It is noticed that there were two persons and the weapons used were allegedly three but the manner in which those were used have not been stated. It is admitted by the said witness that with respect to the same incident, respondent Purshotam Singh had also lodged a report against him, as well as his brother Waryam Singh and father Janak Singh, which is pending. This fact was admitted by the Investigating Officer (PW8) in his statement. Ext.D1 is said to be the photocopy of that complaint but the trial court has not put the exhibit thereon. Further the fact of dragging towards the compound of the respondents was not disclosed in the

FIR. PW6 Padu Ram has not supported the case of the prosecution.

A perusal of this document purported to Ex.D1, shows that respondent Purshotam Singh had gone to answer the call of nature. At that time, he happened to meet Gagan Singh PW5 who asked from him that on the previous day as to why he and his brother were hurling abuses to his father. On this he (Purshotam Singh) replied that both of them had compromised the matter, but Gagan Singh called his brother Sansar Singh and started beating him with the result he sustained injuries. This case was presented in the court, but later sent to Panchayat, where it is pending.

It is evident from the above discussion of the evidence that the very genesis of the prosecution story has been suppressed by the prosecution witnesses. The report of the respondent Purshotam Singh was prior in time than that of present complainant. There is not even a flitting reference in the challan under Section 173 of the Code of Criminal Procedure with respect to the complaint filed by the respondent Pushotam Singh and result thereof. Therefore, in these circumstances and in view of the conflicting statements of the Prosecution witnesses, in my considered opinion, the learned trial Court had rightly recorded the judgment of acquittal. The view taken for acquittal by the trial court is possible. Thus, the appeal merits dismissal, which is accordingly dismissed. The respondents are discharged of their bail bonds entered upon by them at any time during the proceedings of this case.

June 22nd, 2007. **(Surinder Singh)**
(PDS) **Judge**.